for The Defense

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The Training Newsletter for the Maricopa County Public Defender's Office ⋈ Dean Trebesch, Maricopa County Public Defender

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Motion To Enforce Plea Agreement-- The Motion That Wouldn't Die
(It's not dead yet. It's feeling much better.)

by Karen Clark, Deputy Public Defender

Editor's Note: As we went to press, Division One of the Arizona Court of Appeals ruled on the special action referred to by Ms. Clark in this article. The court granted the relief requested by the state and remanded the case back to the trial court with directions to allow the state to withdraw from the plea agreement. Ms. Clark is contemplating a Petition for Review to the Arizona Supreme Court, and will update the status of the case in a future edition of ***for The Defense****.*

So, you've negotiated a plea agreement in justice court. You've talked with your client, reviewed the file, conferred with the prosecutor, and this seems to be the best way to go. Next thing you know, it all falls apart. The state, for one reason or another, changes its collective mind, and withdraws from the plea agreement at the arraignment.

The consensus among defense lawyers is that there is nothing you can do at this point. After all, the plea agreement allows **both** parties to the agreement to withdraw before it is accepted by the court. Rule 17.4(b) of the Rules of Criminal Procedure says that the agreement may be revoked by **any** party prior to its acceptance by the court. The case law must surely be against us. All is lost. Right?

Wrong! Recently, under an admittedly unique set of facts, I filed a Motion to Enforce Plea Agreement --and won!

But will this work for you? The answer is--as always--it depends. Basically, the law says that the general rule allows the government to withdraw under certain circumstances, but not others.

In my case,[1] the facts are as follows: my client was arrested for DUI. He blew a .081 and a point .082, but he also had a suspended license and a prior DUI. He was charged with one count of aggravated DUI, a class 4 felony.

On the date of his preliminary hearing, the prosecutor told me that my client was on parole for his prior felony. She told me that she knew it was an

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aggravated assault class 3 prior, and that she **believed** it was for a vehicular crime. She then offered my client a no agreements plea offer, with four months minimum DOC, no allegation of prior, no allegation of probation/parole violation. Pretty standard stuff. My client wanted to take the deal.

What happened next was not very common at all. During our negotiations, the prosecutor was on the phone with her office about this case. At some point, she spoke with Deputy CA Mitch Rand, the supervisor of the Vehicular Crimes Bureau. He told her that he did **not** approve of her plea offer.

I told her that my client had already accepted the offer she'd made. She then agreed to write up the plea offer she had extended, saying that she knew she would "take some heat" for doing so, and that she thought the state might likely withdraw at the arraignment.

Which, of course, is exactly what happened. The case was set for trial in front of Judge J. Kenneth Mangum.

I then started asking around the office for someone who had tried to fight the government on this point. The only person who seemed to be filing these motions was Barbara Spencer. She gave me a copy of her motion and wished me luck.

In doing the research on the motion, I was surprised to find that the law in this area is not as clear-cut, in favor of the government's right to withdraw, as one would believe.

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Arizona courts hold that while a plea bargain is a matter of criminal jurisprudence, it is contractual in nature, and must be measured by contract law standards.[2] As part of the contractual nature of plea agreements, the law allows the state to rescind the agreement when the defendant breaches the terms of the agreement.[3]

However, the courts have recognized that the contract law analogy does not always fit in the context of the plea bargaining process. This phase of the process of the criminal justice system, and the adjudicative element inherent in accepting a plea of guilty, must be attended by safeguards to ensure the defendant what is reasonably due under the circumstances.[4]

The best authority for the argument that the state can't withdraw willy-nilly from plea agreements is *Cooper v. United States*, 594 F.2d 12 (4th Cir. 1979). In *Cooper*, a subordinate government lawyer (an Assistant U.S. Attorney) made a verbal plea offer. It was immediately conveyed to the client, who accepted it. When the defense counsel attempted to contact the subordinate lawyer to communicate acceptance, he was told that the subordinate's supervising attorney had overruled the subordinate's decision. The plea offer had never been reduced to writing. The United States Court of Appeals held that the government could not withdraw from its **verbal** plea offer, and remanded with instructions that the defendant was entitled to specific enforcement of the oral contract. The court held that constitutional fairness requires that the government's promises be fulfilled unless "extenuating circumstances affecting the propriety of the proposal that were **unknown to and not reasonably discoverable by the government when the proposal was made** have supervened or become known".[5]

In Arizona, the court of appeals has held that the concept of fundamental fairness applies in the context of plea negotiations. *State v. Platt*, 162 Ariz. 414, 414-15, 783 P.2d 1206, 1206-7. After noting the general rule that plea agreements may be withdrawn by the state, the *Platt* court went on to note:

> [Plea bargains] may not, however, be rescinded simply because the State, on reflection, wishes it had not entered into the agreement at all. . . To allow the State to change its mind in these circumstances comports neither with ordinary contract principles nor with the more expansive notions of fundamental fairness that control the relations between a State and its citizens.

162 Ariz. at 414, 783 P.2d at 1206-1207.

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The argument should be framed, then, under the United States and Arizona constitutions. In order to succeed, however, you are going to have to work your way around a recent U.S. Supreme Court case.

In *Mabry v. Johnson*, 467 U.S. 504, 104 S. Ct. 2543 (1984), the defendant was tried and convicted on three charges: burglary, assault, and murder. The murder conviction was subsequently set aside, and plea negotiations on the charge ensued.[6]

The prosecutor proposed to defense counsel that in exchange for the defendant's guilty plea to a charge of accessory after a felony murder, the prosecutor would recommend a sentence of 21 years, to run concurrent with the burglary and assault sentences. The next day, defense counsel communicated the offer to the defendant, who accepted it. On the next working day, defense counsel called the prosecutor to communicate the defendant's acceptance of the offer. The prosecutor then told defense counsel that a mistake had been made, and withdrew the offer.

If the defendant had attempted to then enforce the oral plea offer, the facts of *Mabry* would look a lot like *Cooper*. At this point, however, the facts diverge. After withdrawing his first offer, the prosecutor then proposed a second plea offer, whereby he would recommend a sentence of 21 years to run *consecutive* (not concurrent, as in the first offer) to the defendant's other sentences. Ultimately, the defendant accepted the second offer, and was sentenced to serve 21 years consecutive to his other sentences.[7]

The appellate court reversed the defendant's conviction, and the United States Supreme Court accepted review and reversed. The factual differences between *Mabry* and *Cooper* are obvious and profound. The real issue in *Mabry* was whether the defendant could retrieve a verbal plea offer after accepting a contrary written plea agreement encompassing the same criminal conduct. The Court held that clearly he could not.

However, *Mabry* cannot reasonably be stretched beyond the facts of that case, to stand for the absolute rule that plea agreements may be arbitrarily withdrawn by the state. If the Court had intended such a holding, it should have stated so, and it would also have been necessary to overrule *Cooper*. It refrained from doing so on both counts.

Subsequent decisions interpreting *Mabry* have found that it does not stand for such a blanket rule. In *State v. Superior Court*, 160 Ariz. 71, 770 P.2d 375 (App. 1988), the Arizona Court of Appeals construed Rule 17.4(b) in light of *Mabry*. The court held that there is a detrimental reliance exception to the rule pronounced in *Mabry*.

> While circumstances may arise where a plea defendant's detrimental reliance on a plea agreement prior to the entry of his guilty plea will preclude the state from withdrawing from or revoking the agreement . . . the provisions of Rule 17.4(b) are not per se violative of the principles announced in *Santobello* or *Mabry*.[8]

Other courts have found similar exceptions to the general rule. *See People v. Macrander*, 756 P.2d 356, 359 (Colo. 1988) ["While plea agreements between defendant and prosecutor may resemble formal contracts, it is the defendant's detrimental reliance on the prosecutor's promise--and not the presence or absence of a valid contract--that gives rise to a constitutional right to the government's performance of the contract.], and ; *State v. Crockett*, 877 P.2d 1077, 1079 (Nev. 1994) ["The general rule, however, is subject to a detrimental reliance exception. Even if the agreement has not been finalized by the court, 'a defendant's detrimental reliance on a prosecutorial promise in plea bargaining could make a plea agreement binding', *citing U.S. v. Savage*, 978 F.2d 1136, 1138 (9th Cir. 1992)"].

In Arizona, a criminal defendant's right to a preliminary hearing is guaranteed under the Arizona Constitution, Article 2, §30, A.R.S. §13-3951 et seq., and Rule 5.1 of the Rules of Criminal Procedure. An argument can be made that giving up this right is in and of itself detrimental reliance.

However, when this is coupled with the client's liberty interests, the argument gets even stronger. When a defendant's liberty is restrained prior to trial either through incarceration or through conditions on his bail, the waiver of the right to a preliminary hearing directly implicates constitutional interests. *Gerstein v. Pugh*, 420 U.S. 103, 95 S. Ct. 854 (1975). *See*, generally, 2 W. LaFave & J Israel, Criminal Procedure §14.2 at 246-7 (1984). Courts have held that in light of the importance of the preliminary hearing to the accused and the restraints to which he is subject in light of his waiver of a hearing, a defendant may be entitled to specific performance of the plea offer. *People v. Macrander*, 756 P.2d 356 (Colo. 1988).

As a final note--the state filed a Special Action appeal of Judge Mangum's decision to enforce the plea agreement in my case. *State v. Fredericks* is being conferenced by the Court of Appeals, Division 1, on June 11, 1996. An update on the status of this case will be provided in the next edition of ***for the Defense***.

(cont. on pg. 4)☞

1. *State v. Fredericks*, CR 96-01645, CA-SA 96-0153.

2. *State v. Taylor*, 158 Ariz. 561, 563, 764 P.2d 46, 48-9 (App. 1988).

3. *Ricketts v. Adamson*, 483 U.S. 1, 9-12 (1987); *U.S. v. Savage*, 978 F.2d 1136, 1137-38 (9th Cir. 1992).

4. *Santobello v. New York*, 404 U.S. 257, 261, 92 S. Ct. 495, 498 (1971).

5. 594 F.2d at 19.

6. 467 U.S. at 505, 104 S. Ct. at 2545.

7. *Ibid* at 506, 2546.

8. 160 Ariz. at 72, 770 P.2d at 376. Ω

The Board of Executive Clemency

by Carol Carrigan,
Deputy Public Defender--Appeals Division

As you well know, the Arizona sentencing scheme leaves little or no discretion for sentencing judges and, all too often, results in imposition of a term unwarranted by the defendant's actions or dangerousness to the community. Although sentencing is a judicial function, our courts have shown no inclination to wrest back that function from legislators who delight in enacting ever more punitive sentencing provisions in order to obtain or retain office. Perhaps, however, there may be something you can do for the client whose crime and circumstances do not and should not warrant a term in prison.

Arizona Revised Statutes Section 13-603(K) provides that if the sentencing court enters a special order explaining that the mandated sentence is clearly excessive, the person committed to the Department of Corrections (DOC) has ninety days in which to petition the Board of Executive Clemency for commutation of sentence. Unfortunately, neither the Superior Court Clerk's Office nor DOC seems to be aware of this provision and no information is available to the defendant who must petition for clemency within ninety days or waive the privilege.

Therefore, if you feel that it is appropriate for your client to petition for clemency, you may wish to proceed as follows.

1) If the circumstances warrant, move the sentencing judge for a special order pursuant to A.R.S. §13-603(K) setting forth the reasons for clemency.

2) Ask the judge to issue a special order at the time of sentencing pursuant to A.R.S. §13-603(K) setting forth the reasons that the sentence the law requires is excessive.

3) If the court grants the motion, ask that a copy of the special order (with reasons listed) accompanied by any statements of the state and the victim be sent to the Board of Executive Clemency.

4) Send a notice advising the client of the court's special order and the ninety-day time limit. A form letter should probably be maintained by the lead secretary in each trial group which reads approximately as follows:

> Dear Mr. ___:
>
> At the time of your sentencing, the court entered a special order permitting you to petition the Board of Executive Clemency for a commutation of sentence. You must, however, do this within ninety days from the date of your sentencing. In order to assist you, I am enclosing with this letter a copy of the court's special order setting forth the specific reasons for concluding that your sentence is excessive along with a copy of my motion for the special order, and copies of the statements of the state and the victim. Your petition can be in your own words and you should attach the documents I have mentioned. Address the petition to the Board of Executive Clemency at 1645 West Jefferson, Suite 326, in Phoenix.
>
> Good luck!

Editor's Note: Ms. Carrigan currently has a case on appeal in which the defense attorney did his best to create a record, but the Clerk's Office never copied the Board of Executive Clemency, and DOC had no information for the client. As a result, the 90-day limit had passed before Ms. Carrigan became aware of the issue, and the client was subject to waiver. Fortunately, Ms. Carrigan was able to get the Board to consider the petition despite the delay. Ω

OCI Endeavors to Improve Interpreter Services

by Mary Lou Strehle,
Judicial Services Administrator--OCI

The Office of the Court Interpreter (OCI) is into its third month of the Master Calendar Project. Since the inception of the project, the delay in scheduling attorney appointments has been reduced from 15 working days to 4 - 8 working days.

OCI has been able to identify that the largest volume of interviews is set at the Towers facility. In response, additional interpreter time was scheduled at that facility the first week in June. We expect that this will shorten the delay in scheduling appointments at Towers. OCI will continue in its efforts to monitor and make adjustments as necessary to improve scheduling of interviews.

Processing cases involving Spanish-speaking defendants, as well as victims and witnesses, has presented challenges for OCI and underscored long-term, chronic systemic issues. OCI has increased the number of staff downtown to eight interpreters, and has increased the number of staff interpreters at Juvenile Court from two to three. OCI is fully aware, however, of the need for additional interpreter staff. We were successful in obtaining two new positions from CPAF funds administered by the Arizona Supreme Court (AOC). Our concern is that AOC will only fund these positions for one year, after which they must be absorbed by Maricopa County. In large part due to the efforts of the Public Defender's Office, the County Attorney, the Office of Court-Appointed Counsel, and the Office of the Legal Defender, the need for more interpreters has received the attention of the County Administrator. David Smith and Presiding Judge Myers have discussed the need for additional interpreters and increased funding for recruiting efforts. We are hopeful that five additional positions will be approved. OCI hopes to establish one of these positions as a full-time translator to address the growing demand for written translations.

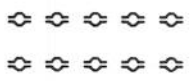
Interpreter caseloads are much like that of the attorneys in that if they are in trial, it is difficult to cover their interviews on other cases. OCI believes the Master Calendar has helped in this regard; however, there is a limit to how many places staff can be. OCI will continue in its pursuit to avoid scheduling conflicts, reduce delays and better manage collective use of interpreter time, e.g., master calendar, staggering interpreter matters on morning calendars.

OCI will be creating an ad hoc committee, comprised of representatives from the criminal justice agencies, to explore other ways to reduce delay and avoid the bottlenecks that occur in the system.

Until additional positions are established, OCI offers these tips for ease in proceeding with cases requiring an interpreter:

- Call as far in advance of the hearing date as possible to schedule an interview with your client.
- Notify OCI as early as possible of the need for an interpreter for victims/witnesses.
- If you must cancel an interview, please notify OCI early so that we might use the time to schedule other interviews or have the information necessary to determine if we can assist the Court in other matters.
- Due to the staggered calendars, it is difficult for the interpreters to review plea bargains with your clients during the morning calendar without causing delay. Review any plea offers with your client prior to the scheduled hearing date. If you do not receive the plea offer until the day of the hearing, please contact the OCI Coordinator, Mary Flury, Ext. 8094, to determine what accommodations can be made to expedite an interview.

Editor's Note: If anyone from our office continues to experience difficulties with obtaining interpreting or translating services over a period of time, please contact Diane Terribile, Special Projects Manager, who is working with OCI on resolving such problems. Ω



Rumor Control

Where Does This Stuff Come From?

by Jim Haas, Senior Deputy

Ever since it was announced that we are finally entering the 20th century by getting computers for the Trial Division, the rumors have been flying. One had it that we were not really getting computers; another that it was either computers or bar dues, and we would lose whichever one was not chosen. We've heard that the county attorneys will be able to read our private, internal e-mail; and that we will never be allowed access to their system, so we won't be able to e-mail them.

Where does this stuff come from?

To set the record straight:

Yes, we are **really** getting computers. The printers and monitors are already in, and equipment is arriving daily. Nearly all existing equipment will be replaced, and all Trial Division staff members, except office aides, will be getting their own PC. The computers in Appeals will be replaced with upgraded models. Existing equipment will be upgraded, where feasible, and recycled. Although the first phase of the project does not include the Juvenile or Mental Health Divisions, we are continuing to look at ways to improve their automation, which may include receiving some upgraded existing equipment.

No, we will not have to give up the bar dues in exchange for the computers. The county manager facetiously suggested this to Dean, because the payment of bar dues was originally disapproved so that any money in our budget could be directed toward automation. But the county has not changed its position on bar dues, and is not expected to do so.

Yes, we will have e-mail, which will include the capability to send and receive messages to the county attorney's office, and to attach documents such as plea agreements. This is perhaps the most important feature of the system. In fact, Rick Romley himself urged the county to approve our project so that his attorneys can talk to our attorneys like they already do with the attorneys in the Legal Defender's Office. He cannot make full use of his system without this feature.

Finally, there is always a risk, in using e-mail, that someone other than the intended recipient will be able to retrieve it. There will be safeguards built in to our system to keep this risk to a minimum. But the world is apparently full of "hackers" who seem to have little to do but try to work their way into other people's computer systems. Whether anyone in the county attorney's office has the time or inclination to do this is questionable. Nonetheless, the best rule is to never send something over e-mail that you wouldn't want to be read by your adversaries. We will have to develop some policies regarding the use of e-mail, as well as other aspects of the computer system, to reduce the risks and make sure everything functions as smoothly as reasonably possible. That will be part of our computer training (yes, we'll get that too!).

We expect the road to automation to be rather bumpy for the next few months, as we get everything in, set up, and running. It will take a while to get the bugs out (just ask anyone in the county attorney's office). But we'll get there, and it should be exciting. Please be patient. And, if you hear a rumor, call me at 8202 and pass it on. I'll give you the real scoop, if I can. Besides, I can always use a laugh! Ω

An Open Letter To One Of My Mentors

There has been much discussion about mentoring and the importance of finding a connection with a person who leads you and guides you as you mature into the person you hope to be. While somewhat leery of the concept in my earlier years, I have come to realize that having someone who talks to you without being judgmental, who pushes you to take risks and who praises you when you succeed is really one of the most essential people in your life.

One of my mentors is a man I have admired for his legal skills, his writing abilities, his ability to mold new lawyers into skilled advocates, his versatility and his commitment to indigent defense. This man has been the training director for the public defender's office for six years. On June 1, Chris Johns will be moving on to our appellate division but I felt he should know that his hard work and dedication to this office did not go unnoticed.

I also felt he should know how much his influence molded me, inspired me and educated me. Chris was one of the first people to ask me to speak at a seminar. Back in 1991, I was invited to speak about Motions for Redetermination of Probable Cause. I

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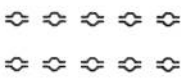
remember it well. I was scared to death. Since then Chris has encouraged me to be involved in more seminars, writing, public speaking, legislative hearings, rules committees, and the like. He instilled in me and others the essence of the defense attorney, the caring and commitment, the compassion and concern, the knowledge of the law and the skills to convince.

Other people fulfill equally important roles in your life. Your husband, your children, your friends provide support and love to help you grow and survive. What a mentor does is different.

My dictionary defines a mentor as a wise, loyal advisor, a teacher or a coach. I think the definition should also include a person who lets you make some mistakes and who makes you stick to your guns when you are right. This mentor provided me with the tools to be successful. If you have a mentor, take a minute to think about what he or she has done for you and what you might have been without them. You might even thank that person.

THANK YOU CHRIS

Your mentee,
Helene F. Abrams Ω



Arizona Advance Reports-- Volumes 214, 215, and 217:
A review of probation-related issues

by Max Bessler, Office of the Legal Defender

Probation Violation

State v. Taylor, 214 Ariz. Adv. Rep. 15 (1996)

The defendant was found to have violated the conditions of his standard and IPS probations by admitting to the use of drugs. Following these admissions, the trial court imposed prison noting ". . . the sentence might well be different" if the court did not feel constrained by A.R.S. §13-917(B). The trial court felt that this statute required revocation because the defendant was found to have committed an additional felony offense by using drugs. The defendant appealed, arguing that only when a condition 1 allegation is proven must the court revoke IPS.

The court of appeals did not accept this argument. It indicated the statute was quite clear: if the court found that the defendant had committed another felony, it must revoke IPS and sentence the defendant to prison. " . . . it [the IPS statute] establishes a single criterion . . . to revoke intensive probation: that the court finds that the defendant has committed a felony." They cited that if the defendant is found to have violated IPS by possessing a weapon, this would be a new felony and revocation would be required.

In its closing statements, the court of appeals noted that this interpretation did not relieve the probation officer of any discretion. They indicated the officer has discretion whether or not to file for a violation and has discretion as to the factual basis of any alleged violations.

Juvenile

Maricopa County Juvenile Action No. JV-508488, 214 Ariz. Adv. Rep. 70 (1996)

The 12-year-old juvenile was placed on probation and ordered as one of the conditions of probation to "attend school as required by law." At a subsequent violation hearing, the probation officer indicated that she wanted the juvenile to attend Valley Vocational Evening Support Program (VVESP) for six months. The court agreed and reinstated the juvenile to probation with the condition that the juvenile attend school as required by law. The juvenile was brought back before the court after failing to attend VVESP during the summer. The defense contended that no condition of probation existed ordering the juvenile to VVESP, only to attend school as required by law. The court did not accept this argument and found the juvenile in violation. He was continued on probation. The juvenile appealed.

The court of appeals agreed with the juvenile that his failure to attend VVESP was not a violation because there was no written condition of probation to this effect.

The second issue raised in this case was whether the juvenile violated his probation by failing to follow the oral directive of the probation officer.

> We conclude that probation revocation is an area of juvenile law in which the adult criminal requirement regarding written notice of the terms of probation upon which revocation is based is appropriately applied as a principle of due process and general fairness. . . . We further conclude that written notice of this term of probation was necessary before its violation could support the juvenile's probation revocation.

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The juvenile court's revocation order was vacated, and the matter remanded.

Assessments, Time Payments, and Surcharges

State v. Torres-Soto, 217 Ariz. Adv. Rep. 9 (1996)

The defendant, an indigent, was sentenced to prison for importation of marijuana. The trial court also imposed a fine, fee, and surcharges totaling $235,887. Although the defendant did not raise the issue of the surcharge in his appeal, the court of appeals ordered supplemental briefings on whether the trial court committed fundamental error in assessing the surcharge to an indigent. In its findings, the court of appeals affirmed the fine which was mandated by A.R.S. §13-3405(D), but noted the trial court had discretion in assessing the surcharge and attorney fees. Rule 6.7(d), Arizona Rules of Criminal Procedure, provides that the court shall assess attorneys' fees for court-appointed counsel provided " . . . he or she is able to pay without incurring substantial hardship to himself or herself or to his or her family." A.R.S. §§12-116.01(D)-.02(D) allows the trial court to waive all or part of a penalty assessment if " . . . the payment of which would work a hardship on the persons convicted or adjudicated or on their immediate families."

In conclusion, the court of appeals noted, "Trial courts have the discretion, and therefore the responsibility, to consider the hardship issue when deciding whether to enhance mandatory fines with surcharges and attorneys' fees." The conviction was affirmed, but the surcharges and attorneys' fees were vacated.

Victims' Rights

State v. Riggs, 214 Ariz. Adv. Rep. 20 (1996)

The defendant appealed his conviction for forgery. As part of his appeal, he argued that the trial court violated his right to confrontation when it refused to allow him to examine the victim about his refusal to grant a pre-trial interview.

In a two-to-one opinion with Judge Kleinschmidt dissenting, the court of appeals concurred with the state that Arizona Revised Statute §13-4433(E) provides that if a defendant comments at trial on the victim's refusal to be interviewed, the jury is to be instructed that the victim has the right to refuse an interview, pursuant to the Arizona Constitution. The court of appeals construed this as a remedy in the event comment on the victim's constitutional right is made.

> The statute does not recognize a defendant's right to inquire as to the reason a victim has declined to be interviewed, as there is no such right. . . . It would be fundamentally unfair to allow the victim's exercise of this constitutional right to be burdened by consequent attacks on trial testimony which the victim can be compelled to provide.

The court of appeals upheld the trial court's decision to preclude the defense from asking the victim about his refusal to grant a pre-trial interview.

State v. Taggart, 214 Ariz. Adv. Rep. 17 (1996)

The defendant was charged with aggravated assault. The two victims refused pre-trial interviews with the defense. At the trial, the defense asked one of the victims if he had refused to grant a pretrial interview. The court sustained the state's objection. The defendant was found guilty. On appeal, the defendant maintained that his right to cross-examine the victim violated his constitutional rights.

The court of appeals, with Judge Kleinschmidt writing the opinion, concurred with the defendant.

> The right to cross-examine a witness is a vital part of confrontation. . . . However, cross-examination may be restricted based on concerns for harassment, prejudice, or marginal relevance. . . . While a victim's refusal to be interviewed may be based on nothing more than a desire to be left alone, it must remain the jury's prerogative to decide whether such a refusal reflects on the victim's credibility.

While supporting the defendant's arguments, the court of appeals found the errors were harmless and affirmed the conviction.

State v. Stapleford, 217 Ariz. Adv. Rep. 41 (1996)

The defendant was charged with aggravated assault against his prison cellmate. The victim cellmate declined a pretrial interview by the defense. The trial court and court of appeals denied the defendant's motion to compel the interview. The Arizona Supreme Court accepted jurisdiction to resolve the issue whether prisoners can claim victims' rights.

The Arizona Supreme Court granted the defendant's motion for the interview. The language of the constitutional amendment is clear that victims' rights apply " . . . except if the person is in custody for an offense or is the accused." The Arizona Supreme Court noted that its comments to Rule 39, " . . . it appeared inadvisable to exclude . . . inmate/victims from the rights guaranteed by the Arizona Constitution," may have led to the trial court's confusion in this matter.

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Prior Convictions

State v. Tarango, 214 Ariz. Adv. Rep. 38 (1994)

The Arizona Supreme Court resolved the differing court of appeals' opinions in *State v. Tarango*, 182 Ariz. 246 (App. 1994) and *State v. Behl*, 160 Ariz. 527 (App. 1989) concerning whether the imposition of A.R.S. §13-604(D) preempts other sentencing statutes. Tarango was convicted of drug sales and two prior convictions. The applicable drug statute A.R.S. §13-3408(B) required the defendant to serve the entire 15.75 years imposed by the court. However, the repetitive statute, A.R.S. §13-604(K), allowed the defendant to serve two-thirds of her sentence. Since the court used A.R.S. §13-3408 mandating no parole, the defendant appealed. The court of appeals upheld the defendant's argument that she was eligible for parole after serving two-thirds of her sentence. In a four-to-one decision, the Arizona Supreme Court upheld this opinion. Justice Martone concurred with the *State v. Behl* decision.

Sex Offender Registration

State v. Cameron, 215 Ariz. Adv. Rep. 26 (1996)

The defendant was convicted in city court of public sexual indecency. The court ordered him to register as a sex offender pursuant to A.R.S. §13-3821. After appealing to the superior court, the defendant appealed to the court of appeals. He argued that such registration for a misdemeanor is cruel and unusual punishment and a ban on his travel. The court of appeals upheld the conviction and the order to register as a sex offender.

Prior Crimes/Convictions

State v. Terrazas, 215 Ariz. Adv. Rep. 45 (1996)

The court of appeals concluded that in proving a prior crime, the proper level of evidence is preponderance rather than that needed to take the question to a jury.

Judicial Issues

State v. Craig, 214 Ariz. Adv. Rep. 11 (1996)

The defendant was convicted of sexual assault, kidnaping, burglary, aggravated assault, and unlawful means of transportation. He appealed the convictions, arguing the court denied his right to a speedy trial in accordance with Rule 8 of the Arizona Rules of Criminal Procedures. The court of appeals concurred with the defendant.

The defendant went to trial 181 days after his arraignment and 81 days past the Rule 8.2(b) deadline. The state argued that the trial court properly excluded these intervening days to allow the state to complete DNA testing and to accommodate the congestion of the court calendar. The court of appeals concluded the exclusion of time based upon the delayed DNA testing was not extraordinary ' . . . if delay is caused by the State's inertia in gathering its evidence or preparing its case." In addressing the issue of court congestion, the court of appeals noted, "The record in this case does not indicate that any application was made to the Chief Justice of the Arizona Supreme Court for suspension of the Rules of Criminal Procedure precludes the court from excluding the seven days from computation."

As part of its conclusion, the court of appeals held the trial court violated the defendant's right to a speedy trial and dismissed the charges against him. The matter was remanded to the trial court to determine if this dismissal was with or without prejudice. Ω

Drug Courts' Success

Non-violent drug offenders who were referred to treatment through special drug courts were much less likely to engage in further criminal activity than drug offenders who were incarcerated without treatment, according to the study "Summary Assessment of the Drug Court Experience," conducted by the American University.

"These courts can and are making a difference," noted Attorney General Janet Reno, an early supporter of such programs.

Fewer than 4% of drug offenders who complete the drug-court program reoffend, compared to a recidivist rate ranging from 5% to 28% for those who did not finish the treatment, the study showed.

At least 45% of drug offenders who were not given treatment committed a similar offense within two to three years.

Maricopa County has had a drug court since 1992, and now averages 200 participants per year. For a detailed description of its operation, see Nora Greer's article "Drug Court" in ***for The Defense***, Volume 5, Issue 12. Ω

Editor's Note: This month we begin a new format for the reporting of trial results. We believe that this setup will be easier to read and will provide more information. The results are printed as given to us by each trial group. Please direct any questions or corrections on this information to the lead secretary of the appropriate group.

MAY, 1996
Jury & Bench Trials--Group A

Dates: Start/Finish	Attorney	Invstgtr.	Judge	Prosecutor	CR# and Charge(s)	Class F/M	Dang.	Priors	On Prbtn./ Parole	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench or Jury Trial
May 6-7	Margot Wuebbels and Russ Born	None	Sargeant	Clarke	CR95-00945 3 cts. Aggravated Assault Armed Burglary 1° Criminal Damage	 F3 F2 F5	 ✓ ✓			Mistrial--juror problems	Jury
May 14-21	Marie Farney	None	Sticht	Ainley	CR94-03855 Aggravated DUI Endangerment	 F4 F6	 ✓	1		Guilty on all counts. Defendant admitted prior felony conviction.	Jury
May 13-29	Candace Kent and Rick Tosto	C. Yarbrough	Sargeant	Reckart	CR95-01823 Kidnapping 2 cts. Aggravated Assault Attempted Sexual Assault 5 cts. Sexual Assault Aggravated Assault	 F2 F3 F3 F2 F6	 ✓ ✓ ✓ ✓ ✓			Not Guilty on one count Sexual Assault. Guilty on all other counts.	Jury
May 14-17	Dennis Farrell	None	Cole	Hoffmeyer	CR95-09219 Aggravated Assault	 F3	 ✓			Not Guilty of Agg. Assault-- Guilty of lesser-included Disorderly Conduct	Jury
May 20-23	John Blavatsky	None	Hilliard	Altman	CR95-10818 Residential Trespassing	 F6				Guilty	Jury
May 28-30	Tom Timmer	T. Neus	Hilliard	Mitchell	CR96-01792 Aggravated Assault	 F3	 ✓			Guilty	Jury
May 30-June 3	Tom Timmer	T. Neus	Bolton	Johnson	CR95-09518 Aggravated Assault	 F3	 ✓	1	✓	Guilty	Jury

MAY, 1996
Jury & Bench Trials--Group B

Dates: Start/Finish	Attorney	Invstgtr.	Judge	Prosecutor	CR# and Charge(s)	Class F/M	Dang.	Priors	On Prbtn./ Parole	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench or Jury Trial
May 1-6	Jim Park	B. Abernethy	Brown	Palmer	95-05620 Burglary 95-06304 Burglary	F4 F4				Guilty Guilty	Jury
May 14-15	William Peterson	None	Arellano	Taylor	CR96-00103 Aggravated Assault Resist Officer/Arrest	 F5 F6				Guilty	Jury
May 15-15	Lisa Posada and Terry Bublik	D. Erb	Dunevant	Rudd	CR95-09337 Poss. of Dangerous Drugs	 F4				Not Guilty	Jury
May 13-18	Troy Landry	D. Ames	Wilkinson	Manning	95-10136 Aggravated DUI	 F4				Guilty	Jury
May 20-28	Brad Bransky	None	Arellano	Greer	95-07026 Kidnapping Sexual Assault Robbery Resisting arrest	 F2 F2 F4		2		Hung jury on all charges except on Resisting Arrest: guilty	Jury
May 20-24	Donna Elm and Mary Kay Grenier	D. Erb	McDougall	Taylor	95-10006 Aggravated Assault	 F3	✓	✓		Guilty	Jury
May 23-23	Marc Kamin	None	Wilkinson	Bernovich	96-01031 POM/Grow/Produce	 F6				Guilty	Bench
May 29-30	Peggy LeMoine	None	Hotham	Dion	95-06114 Poss. of Dangerous Drugs Poss. of Drug Paraphernalia	 F4 F6				 Guilty Guilty	Jury

MAY, 1996
Jury & Bench Trials--Group C

Dates: Start/Finish	Attorney	Invstgtr.	Judge	Prosecutor	CR# and Charge(s)	Class F/M	Dang.	Priors	On Prbtn./ Parole	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench or Jury Trial
April 22 - May 7	Raymond Vaca, Jr.	M. Breen	Scott	Macias	94-91607 6 cts. Sexual Assault 2 cts. Sexual Assault 3 cts. Kidnapping 3 cts. Aggravated Assault 1 ct. Attempted Kidnapping 1 ct. Sexual Abuse 1 ct. Aggravated Assault 1 ct. Sexual Assault 2 cts. Child Molestation 2 cts. Theft	 F2 F5 F2 F3 F3 F2 F2 F3 F2 F3M1	 3✓ ✓ ✓ ✓ ✓ ✓ ✓ 	1	Prob.	 Guilty Guilty Guilty Guilty Guilty Not Guilty Guilty Guilty Guilty Dismissed prior to trial	Jury
April 29-30	Wes Peterson	None	Scott	Fuller	96-90282 Armed Robbery	F2	✓	3		Not Guilty	Jury
May 2-16	Emmet Ronan and Sylvina Cotto	M. Breen	Araneta	Ruiz	95-91564 First Degree Murder	F1	✓			Guilty of Second D. Murder	Jury
May 2-7	Slade Lawson	T. Thomas	Barker	McKay	95-92991 1 ct. Burglary 1 1 ct. Armed Robbery	 F2 F2	 ✓ ✓	1		Not Guilty on all counts	Jury
May 3	Diana Squires	None	Hamblen W. Mesa J.Ct.	Miller	TR96-00507MI DUI & DUI w/BAC over .10%	M1				Guilty	Jury
May 8-13	Paul Ramos and Vernon Lorenz	T. Thomas	Ishikawa	O'Neill	95-92431 1 ct. Child Molestation	F2	✓	1		Not Guilty	Jury
May 10	Todd Coolidge	None	Skrumbellos, E. Mesa J.C.	Baker	TR95-7218 DUI	M1				Guilty	Bench
May 15-21	Ray Schumacher and Cliff Levenson	G. Beatty	Grounds	Hicks	95-90599 1 ct. Drive-By Shooting 4 cts. Aggravated Assault	 F2 F3	 ✓ ✓			Not Guilty--Drive By Shooting; Hung jury--Aggravated Assault; 9 guilty, 3 not guilty	Jury
May 20-22	Melvin Kennedy	None	Hendrix	Smith	96-90709 2 cts. Aggravated DUI	 F4		2		Not Guilty--Aggravated DUI; Guilty Misdemeanor DUI	Jury
May 24	Frank Sanchez	None	Ore, Tempe J.C.	Brenneman	96-0617 Intrfr. w/Judic. Procd.	 M1				Guilty	Bench

MAY, 1996
Jury & Bench Trials--Group D

Dates: Start/Finish	Attorney	Invstgtr.	Judge	Prosecutor	CR# and Charge(s)	Class F/M	Dang.	Priors	On Prbtn./ Parole	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench or Jury Trial
April 8 - May 10	Robert Billar and Jim Martin (Prvt. Cnsl.)	M. Durand	Bolton	Nannetti	CR-95-11742 43 cts. Child Molestation 2 cts. Aggravated Assault 1 ct. Kidnapping	F	✓			Hung Jury (2 cts. Agg Asslt) Hung Jury (1 ct. Kidnapping) Hung Jury (5 cts. Child Molest) Guilty (33 cts. Child Molest) Not Guilty (5 cts. Child Molest)	Jury
April 22	Joe Stazzone	None Reported	Colosi	Ainley	CR-94-08562 Negligent Homicide with Vehicle	F4				Guilty	Jury
April 23-25	Pauline Houle	None Reported	Wilkinson	Morden, C.	CR-95-09749 Poss. of Narcotic Drugs	F4				Guilty	Jury
May 7-15	Jim Wilson	A. Velasquez	DeLeon	Barrett	CR-95-07258 Aggravated Assault	F3	✓			Not Guilty	Jury
May 22-31	Jerald Schreck and Barbara Spencer	None Reported	Gerst	Gialketsis	CR-95-08718 Resisting Arrest Aggravated Assault	F		✓		Guilty - Resisting Arrest Not Guilty - Aggravated Assault	Jury
May 28-30	Nancy Hines and Robert Billar	R. Barwick	DeLeon	Whitten	CR-95-08266 Aggravated Assault	F	✓	✓		Dismissed W/Prejudice	Jury
May 28	Chelli Wallace and Peter Claussen	R. Barwick	Ryan	Wolak	CR-96-00822 Theft	F3		2	Prbtn.	Mistrial: PPD Officer gratuitously testified regarding defendant's invocation of constitutional rights.	Jury
May 31	Chelli Wallace and Peter Claussen	R. Barwick	Ryan	Wolak	CR-96-00822 Theft	F3		2	Prbtn.	Guilty on Lesser--Theft F4; Defendant admitted 2 priors in exchange for concurrent sentences and dismissal of allegation of priors (604.02)	Jury

MAY, 1996
Jury & Bench Trials--Office of the Legal Defender

Dates: Start/Finish	Attorney	Invstgtr.	Judge	Prosecutor	CR# and Charge(s)	Class F/M	Dang.	Priors	On Prbtn./ Parole	Result (w/ hung jury, # of votes for not guilty / guilty)	Bench or Jury Trial
May 13-28	Orent	Soto	Araneta	Sanders	95-92163						Jury
					2d° Murder	F2				Guilty	
					Aggravated Assault	F3	✓			Guilty	
May 28-June 4	Miller	Abernethy	Cole	Schwartz	96-00696						Jury
					Armed Burglary	F2	✓			Not Guilty	
					3 cts. Agg. Assault	F3	✓			Not Guilty	
					2 cts. Kidnapping	F2	✓			Not Guilty	
					Miscon. w/Weapons	F4				Not Guilty	
May 22-30	Steinle	Desanta	Scott	Gann	95-90841						Jury
					Veh. Manslaughter	F2	✓			Mistrial	
					2 cts. Agg. Assault	F3	✓				
May 8-9	Hughes	Brandenberger	Dunevant	Charnell	94-06576						Jury
					Armed Robbery	F2	✓	1		Guilty of Armed Robbery non-dangerous	
May 20-24	Tate		Cole	Hicks	95-12298						Jury
					3 cts. Armed Robbery	F2	✓			Guilty	
					Kidnapping	F2	✓			Not Guilty	
					2 cts. Unlawful Use of Trans.	F6				Guilty	
May 21-29	Funckes		Campbell	Righi	95-07835						Jury
					2d° Murder	F1		1	Prbtn.	Guilty	
					Agg. Assault	F3	✓			Not Guilty--Guilty of Misd. Assault	
					Lvg.Scene of Acc.Inv.Death	F3				Guilty	
May 1-3	Alldredge		Sheldon	Pimsner	94-10943						Jury
					Poss.Dang.Drugs For Sale	F3				Guilty lesser-included PODD	
					Hndrg. Prosecution 1°	F5				Dismissed	
					Ill.Cond.Crim.Enterprise	F3				Dismissed	

Bulletin Board

◆ *New Attorneys (starting new attorney training this month):*

Ingrid Miller, formerly a law clerk in our Juvenile Division (and previously a law clerk for private counsel Jeffrey Williams), graduated from Arizona State University's College of Law in 1995. While in law school, Ms. Miller served as a consultant for the San Carlos Apache Tribe in Globe, Arizona where she worked on revising the tribal code. She received a B.A. in Political Science from the State University of New York. Ms. Miller will join our Juvenile Division at Durango.

Alex Navidad, a law clerk for Trial Group B and a former participant in our office's DUI externship program as well as the Arizona Capital Representation Project, was awarded his J.D. from Arizona State University's College of Law in 1995. Mr. Navidad, who received his B.A. in Spanish from the University of California at Santa Barbara, has been instrumental in the updating of our office's Spanish documents. Mr. Navidad will remain with Trial Group B.

Stacey O'Donnell, who previously worked with Michael Bernays, received her J.D. from Arizona State University's College of Law in 1995. While in law school, Ms. O'Donnell served externships for the Honorable Stephen McNamee in the United States District Court and for the Civil Division of the Arizona Attorney General's Office. Ms. O'Donnell earned a B.A. in Political Science from the University of Arizona in 1992 and is fluent in Spanish. She will work in Trial Group B.

Ronald Rosier, who served as a law clerk in Trial Group C, received his J.D. from Arizona State University's College of Law in 1995. He earned a B.S. in English from Northern Arizona University in 1991. Prior to entering law school, Mr. Rosier worked as a legislative intern in the Arizona House of Representatives and as a substitute teacher in Sanders, Arizona. Mr. Rosier will join Trial Group C.

Richard Zielinski, an Initial Services Specialist in our office who participated in our DUI externship program while in law school, received his J.D. from California Western's School of Law. He earned his B.S. in Finance from Arizona State University. Prior to entering the university, Mr. Zielinski served in the U.S. Navy as an Anti-Submarine Warfare Operator tracking Soviet submarines. He will be assigned to Trial Group D after being sworn in this July.

◆ *New Support Staff:*

Judi Bishop is the new Administrative Coordinator assigned to assist our Administrative Support Manager Rose Salamone. Ms. Bishop is a graduate of the Gregg Business College and previously worked in the county's Finance Office, Administrative Office, and General Services Agency.

James Miller, **Susan Sedlacek** and **Victoria Washington** are our new law clerks serving Trial Group C, Juvenile, and Trial Group B respectively. Mr. Miller (whose brother, Neil Miller, works in the County Attorney's Office) previously served an internship with the P.D.'s office in Tulsa. Ms. Sedlacek and Ms. Washington previously participated in our DUI externship program headed by Dan Lowrance.

Zachary Storrs joined our office as an Records Assistant on June 03. Mr. Storrs will work for us during the summer break from his studies at the Vanderbilt University in Nashville, Tennessee.

◆ *Moves/Changes:*

Bill Carter, an attorney in our Juvenile Division--Durango, will leave our office on June 29 after 10 years of service with MCPD.

◆ *Speakers Bureau:*

Rena Glitsos and **Karen Clark** recently spoke with lawyers, judges, and a police officer visiting from Germany to study our legal system. Ms. Glitsos and Ms. Clark explained our criminal justice system and addressed the visitors' questions regarding the controversial issues of capital cases.

Colleen McNally escorted a class of Estrella Junior High School students through the courts on May 8, as part of Maricopa County's Courthouse Experience. The pupils' teacher wrote in a thank-you letter, "I realize your day is very busy, and I want you to know that your interest in these children did truly have an impact!" Ω

Justice consists in doing no injury to men; decency in giving them no offence.

Cicero (106-43 B.C.),
Roman Philosopher

Computer Corner

This column is designed to provide simple computer tips helpful to people in the legal field. These tips are fashioned for WordPerfect 5.1 in DOS. If you have any problems, questions or suggestions that you would like to share, please contact Ellen Hudak in Administration (506-6633).

S p r e a d i n g O u t T e x t :

There is an easier way to spread a heading across a page without manually inserting a space between each letter in the heading.

Before entering the keystrokes listed below, make sure your justification is set to Full. You can set it to Full by pressing Format (Shift-F8), (1) Line, (3) Justification, (4) Full, then pressing Exit (F7).

Type your heading, such as YEAR END REPORT, at the left margin of your document.

Insert another [Just:Full] code by pressing Format (Shift-F8), (1) Line, (3) Justification and choosing (4) Full. Press Exit (F7) to return to your document. Your cursor will be on the next line. Reset the justification for the remainder of your document if you wish.

The headline may not look any different on your document screen, so press Print (Shift-F7), (6) View Document (or if you have a macro for viewing document) to see how it will print.

Blocking Paragraphs:
A quick way to block to the end of a paragraph is to press (Enter) after you turn on Block (Alt-F4) or Block (F12). Another way is to turn on Block (Alt-F4) or (F12), then press (Ctrl-Down Arrow).

- These methods will not work if you are not using an enhanced keyboard, or if you use the /NK start-up switch.

Dashed Filenames:
To use **List** (F5) more effectively to access your most frequently used files quickly, just insert a dash **(-)** before your most used documents.

To do this, with the desired document on your screen, press **(Save)** (F10), type a dash (-), the filename and press (Enter). When you retrieve a directory with **List** (F5), the "dashed filenames" are listed ahead of the alphabetical files.

Tables:
An easy way to add a row to a table without going back into Columns/Table (Alt-F7) is to press the "Ctrl" and "Insert" keys.

To delete a row, again without going back into the Columns/Table (Alt-F7), press the "Ctrl" and "Delete" keys. Just to make sure, the computer will ask if you want to delete **Y** (Yes) or **N** (No).

Brainteaser for June.[1]
(Answer will be in July's issue of "*for The Defense*")

JUST FOR FUN

THOUGHTAN

[1]Answer to May's "Brainteaser" is
I'm between Jobs

Ω